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## Headquarters, Fifth Military District,

NEW ORLEANS, LA., March 9, 1868.

To His Excellency, E. M. Pease, Governor of Texas:

Sir—Your communication of the 17th January last, was received in due course of mail, (the 27th January,) but not until it had been widely circulated by the newspaper press. To such a letter—written and published for public purposes—it has been my intention to reply as soon as leisure from more important business would permit.

Your statement that the Act of Congress "to provide for the more efficient government of the rebel States," declares that whatever government existed in Texas, was provisionally that peace and order should be enforced; that Texas should be part of the Fifth Military District, and subject to military power; that the President should appoint an officer to command in said District, and detail a force to protect the rights of person and property, suppress insurrection and violence, and punish offenders, either by Military Commission, or through the action of local civil tribunals, as in his own judgment, might seem best, will not be disputed. One need only read the Act to perceive it contains such provisions. But how all this is supposed to have made it my duty to order the Military Commission respecting you, have entirely failed to show. The power to do a thing it shows, and the propriety of doing it, are often very different matters. You observe you are at a loss to understand how a government without representation in Congress, or a military one, and subject to military power, can be said to be in the full exercise of all its proper powers. You do not reflect that this government, created or permitted by Congress, has all the powers which the act intends, and may fully exercise them accordingly. If you think it ought to have more powers, should be allowed to send members to Congress, wield a militia force, and possess yet other powers, your complaint is not to be preferred against me, but against Congress, who made it what it is.

As respects the issue between us, any question as to what Congress ought to have done, has no pertinence. You admit the Act of Congress authorizes me to try an offender by Military Commission, or allow the local civil tribunals to try, as I shall deem best; and you cannot deny the act expressly recognizes such local civil tribunals as legal authorities for the purpose specified. When you contend there are no local civil tribunals for any purpose in Texas, you must either deny the plain meaning of the Act of Congress, or the power of Congress to pass the Act.

You must remark that you dissent from my declaration, "that the country (Texas) is in a state of profound peace," and proceed to state the grounds of your dissent. They appear to me not a little extraordinary. I quote your words: "It is true there is no long a exists here (Texas) any organ of resistance to the authority of the United States." "But a large majority of the white population, who participated in the late rebellion, are embittered against the Government, and still demand unflinching obedience." Nevertheless, you contend they do yield it all obedience. You proceed: "None of this class have any affection for the Government, and very few any respect for it." They regard the legislation of Congress on the subject of reconstruction, as an unconstitutional and hostile to their interests, and consider the government now existing here, and the authority of the United States, as an usurpation on their rights. They look on the emancipation of their late slaves, and the disfranchisement of a portion of their own class as an act of insult and oppression."

And this is all you have to say in proof that war and not peace prevails in Texas, and hence it becomes my duty as you suppose to set aside the local civil tribunals, and enforce the penal code against citizens, by means of Military Commissions.

My Dear Sir, I am not a lawyer, nor has it been my business, as it may have been yours, to study the philosophy of states, and politics. But I may lay claim, after an experience of more than half a century, to some poor knowledge of men, and some appreciation of what is necessary to secure order and happiness. And for the future of our common country, I could do heartily wish that no good number of our people have yet fallen in with the views you appear to entertain. Who be to us when, or it shall come to pass that the power of the magistrate—civil or military—is permitted to deal with the mere opinions or feelings of the people.

I have been accustomed to believe that sentiments of respect or disrespect, and feelings of affection, loyalty, or hate, &c., are not to be legalised into acts in violation of law, nor matters wholly beyond the punitive power of human tribunals.

I will maintain that the entire freedom of thought and speech however unanimously indulged, is consistent with the rights, expectations of men, and the happiest condition of his race.

When a boy, I remember to have read a speech of Lord Chatham, delivered in Parliament. It was during our Revolutionary war, and related to the policy of employing the savages on the side of Britain. You may be more familiarly acquainted with it, than I am. It cannot exactly mistake, as Lordship denounced the British Government, the government of the savages, as tyrannical and arbitrary. He characterized its policy as revolting to every sentiment of humanity and honor, on principle, as cruel and unjust, and ended his speech with a declaration of its total and utter abhorrence. It may, I think, be easily ascertained, that the views of the British nation concerning the rights of Lord Chatham. But I never supposed that political parties, or persons, would be so mean, King, Queen, or that Government, to feel any authority to restrain the absolute right of free opinion, nor to persecute any man, on the plea that the King's income, or any works, or to any extent, may please. It could be difficult to find a more liberal Government in the days of the elder Adams, or Jefferson, or Jackson, or a more liberal one at our present day. You are conversant with the history of our past ages, and political struggles, to have read the lives of our great men, the energies, National traits, our wars with England, and Mexico, and cannot be ignorant of the manner in which the great men of every system of religion is an unqualified oppressor, and impurity, is not one with three, and the States of the people of Texas consider the acts of Congress as unconstitutional, oppressive, and a violation of the rights of the people. The President of the United States has announced his opinion, that the laws of the United States

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unconstitutional. The Supreme Court, as you are aware, not long ago decided unanimously that a certain Military Commission was unconstitutional. Our people every where, in every State, without reference to the side they took during the rebellion, differ as to the constitutionality of these acts of Congress. How the matter really is, neither you nor I may dogmatically affirm.

If you deem them Constitutional laws, and beneficial to the country, you not only have the right to publish your opinions, but it might be your bounden duty as a citizen to do so. Not less is it the privilege and duty of any and every citizen, wherever residing, to publish his opinion freely and fearlessly on this and every question which he thinks concerns his interest. This is merely in accordance with the principles of our free Government; and neither you nor I would wish to live under any other. It is time now, at the end of almost two years from the close of the war, we should begin to recollect what in number of people we are: to tolerate again free, popular discussion, and extend some forbearance and consideration to opposing views. The maxims that in all intellectual contests, truth is mighty, and must prevail; and that error is harmless when reason is left free to combat it, are not only sound, but salutary. It is a poor compliment to the merits of such a cause, that its advocates would silence opposition by force; and generally those only who are in the wrong will resort to this ungenerous means. I am confident you will not commit your serious judgment to the proposition that any amount of discussion, or any sort of opinions, however unwise in your judgment; or any assertion or feeling, however resentful or bitter, not resulting in the breach of law, can furnish justification for your denial that profound peace exists in Texas. You might as well deny that profound peace exists in New York, Pennsylvania, Maryland, California, Ohio and Kentucky, where a majority of the people differ with a minority on these questions; or that profound peace exists in the House of Representatives, or the Senate, at Washington, or in the Supreme Court, where all these questions have been repeatedly discussed, and parties respectfully and patiently heard. You next complain that in parts of the State, (Texas,) it is difficult to enforce the criminal laws; that Sheriffs fail to arrest; that Grand Jurors will not always indict; that in some cases the military acting in aid of the civil authorities have not been able to execute the process of the courts; that Petit Jurors have acquitted persons adjudged guilty by you; and that other persons charged with offences have broke jail and fled from prosecution. I know not how these things are; but admitting your representations literally true, if for such reasons I should set aside the local civil tribunals and order a Military Commission, there is no place in the United States where it might not be done with equal propriety. There is not a State in the Union—North or South—where the like facts are not continually happening. Perfection is not to be predated of man or his works. No one can reasonably expect certain in his date just as in his moral transactions; and if Military power is to be set in motion, on the principles for which you would seem to contend, I fear that a Civil Government, regulated by laws, could have no abiding place beneath the eident of the sun. It is rather more than hinted in your letter, that there is no local State Government in Texas, and no local laws, outside of the Acts of Congress, which I ought to respect; and that I should undertake to protect the rights of persons and property in *my own way*, and in an *arbitrary manner*. If such be your meaning, I am compelled to differ with you. After the abolition of slavery, (an event which I hope no one now regrets,) the laws of Louisiana and Texas, existing prior to the rebellion, and not in conflict with the Acts of Congress, comprised a vast system of jurisprudence, both civil and criminal. It required not volumes only, but libraries to contain them. They laid down principles and precedents for ascertaining the rights and adjusting the controversies of men in every conceivable case. They were the creations of great and good and learned men, who had labored, in their day, for their kind, and gone down to the grave long before our recent troubles, leaving their work an inestimable legacy to the human race. These laws, as I am informed, connected the civilizations of past and present ages, and testified of the justice, wisdom, humanity and patriotism of more than one nation, through whose records they descended to the present people of these States. I am satisfied from representations of persons competent to judge, they are as perfect a system of laws as may be found elsewhere; and better suited than any other to the condition of this people, for by them they have long been governed. Why should it be supposed Congress has abolished these laws? Why should any one wish to abolish them? They have committed no treason; nor are hostile to the United States; nor contumacious crime; nor favor injustice. On them, as on a foundation of rock, reposes almost the entire superstructure of social order in these two States. Annul this code of local laws, and there would be no longer any rights, either of persons or property here. Abolish the local civil tribunals made to execute them, and you would virtually annul the laws, except in reference to the very few cases cognizable in the Federal Courts. Let us, for a moment, suppose the whole local civil code annulled; and that I am left, as Commander of the Fifth Military District, the sole fountain of law and justice. This is the position in which you would place me.

I am now to protect all rights, and redress all wrongs. How is it possible for me to do it? Innumerable questions arise, of which I am not only ignorant, but to the solution of which a Military Court is entirely unfitted. One would es ablish a will, another a deed; or the question is one of succession, or partnership, or descent or trust; a suit of ejectment or claim to chattels; or the application may relate to robbery, theft, arson or murder. How am I to take the first step in any such matter? If I turn to the Acts of Congress, I find nothing on the subject. I dare not open the authors on the local code, for it has ceased to exist.

And you tell me that in this perplexing condition, I am to furnish by dint of my own hasty and crude judgment, the legislation demanded by the vast and manifold interests of the people! I repeat, sir, that you, and not Congress, are responsible for the monstrous suggestion that there are no local laws or institutions here to be respected by me, outside the Acts of Congress. I say unhesitatingly, if it were possible that Congress should pass an act abolishing the local codes for Louisiana and Texas—which I do not believe—and it should fall to my lot to supply their places with something of my own, I do not see how I could do better than follow the laws in force here prior to the rebellion, excepting whatever therein shall relate to slavery. Power may destroy the forms, but not the principles of justice; these will live in spite even of the sword. History tells us that the Roman pandects were lost for a long period among the rubbish that war and revolution had heaped upon them, but at length were dug out of the ruins—again to be regarded as a ~~precious~~ treasure.

You are pleased to state that "since the publication of (my) General Orders No. 40, there has been a perceptible increase of crime, and manifestation of hostile feeling towards the Government and its supporters," and add that it is "an unpleasant duty to give such a rental of the condition of the country."

You will permit me to say that I deem it impossible the first of these statements can be true, and that I do very greatly doubt the correctness of the second. General Orders No. 40, was issued at New Orleans, November 29th, 1867, and your letter was dated January 17th, 1868. Allowing time for order No. 40 to reach Texas, and become generally known, some additional time must have elapsed before its effect would be manifested and a yet further time must transpire before you would be able to collect the evidence of what you term "the condition of the county," and yet after all this you would have to make the necessary investigations to ascertain if Order No. 40 or something else was the cause. The time therefore remaining to enable you

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before the 17th of January 1868, to reach a satisfactory conclusion on so delicate and nice a question must have been very short. How you proceeded, whether you investigated yourself or through third persons, and if so who they were, what their competency and fairness, on what evidence you rested your conclusion or whether you ascertained any facts at all, are points upon which your letter so discreetly omits all mention, that I may well be excused for not relying implicitly upon it; nor is my difficulty diminished by the fact that in another part of your letter you state that ever since the close of the war a very large portion of the people have had no affection for the Government, but bitterness of feeling only. Had the duty of publishing and circulating through the country long before it reached me, your statement that the action of the District Commander was increasing crime and hostile feeling against the Government, been less painful to your sensibilities, it might possibly have occurred to you to furnish something on the subject in addition to your bare assertion.

But what was Order No. 40, and how could it have the effect you attribute to it? It sets forth that "the great principles of American liberty are still the inheritance of this people, and ever should be." "That the right of trial by jury, the habeas corpus, the liberty of the press, the freedom of speech, and the ~~essential~~ rights of person and property must be preserved. *make* Will you question the truth of these declarations? Which one of these great principles of liberty are you ready to deny and repudiate? Whoever does so avows himself the enemy of human liberty and the advocate of despotism. Was there any intimation in General Orders No. 40, that any crimes or breaches of law would be countenanced? You know that there was not. On the contrary, you know perfectly well that while "the consideration of crime and offences committed in the Fifth Military District, was referred to the judgment of the regular civil tribunals," a pledge was given in Order No. 40, which all understood, that tribunals would be supported in their lawful jurisdiction, and that "forceful resistance to law would be instantly suppressed by arms." You will not affirm that this pledge has ever been forfeited. There has not been a moment since I have been in command of the Fifth District, when the whole military force in my hands has not been ready to support the civil authorities of Texas in the execution of the laws. And I am unwilling to believe they would refuse to call for aid if they needed it.

There are some considerations which, it seems to me, should cause you to hesitate before indulging in wholesale censures against the civil authorities of Texas. You are yourself the chief of those authorities, not elected by the people, but created by the military. Not long after you had thus come into office, all the Judges of the Supreme Court of Texas—five in number—were removed from office and new appointments made; twelve of the seventeen District Judges were removed and others appointed. County Officers, more or less, in seventy-five out of one hundred and twenty-eight Counties, were removed and others appointed in their places. It is fair to conclude that the executive and judicial civil functionaries in Texas, are the persons whom you desired to fill the offices. It is proper to mention, also, that none but registered citizens, and only those who could take the test oath, have been allowed to serve as jurors during your administration. Now, it is against this local government, created by military power prior to my coming here, and so composed of your personal and political friends, that you have preferred the most grievous complaints. It is of them that you have asserted they will not do their duty; they will not maintain justice; will not arrest offenders; will not punish crimes; and that out of one hundred homicides committed in the last twelve months, not over ten arrests have been made; and by means of such gross disregard of duty, you declare that neither property nor life is safe in Texas.

Certainly you could have said nothing more to the discredit of the officials who are now in office. If the facts be as you allege, a mystery is presented for which I can imagine no explanation. Why is it that your political friends, backed up and sustained by the whole military power of the United States, in this District, should be unwilling to enforce the laws against that part of the population lately in rebellion, and whom you represent as the offenders? In all the history of these troubles, I have never seen or heard before of such a fact. I repeat, if the fact be so, it is a profound mystery, utterly surpassing my comprehension. I am constrained to declare that I believe you are in very great error as to facts. On careful examination at the proper source, I find that at the date of your letter, four cases only, of homicides, had been reported to these Headquarters as having occurred since November 29, 1867, the date of Order 40, and these cases were ordered to be tried or investigated as soon as the reports were received. However the fact of the one hundred homicides may still be correct, as stated by you. The Freedmen's Bureau in Texas, reported one hundred and sixty; how many of these were by Indians and Mexicans, and how the remainder were classified, is not known; nor is it known whether these data are accurate.

The report of the Commanding Officer of the District of Texas shows that since I assumed command, no applications have been made to him, by you, for the arrest of criminals in the State of Texas.

To this date, eighteen cases of homicides have been reported to me, as having occurred since November 29, 1867, although special instructions had been given to report such cases as they occur. Of these, five were committed by Indians; one by a Mexican; one by an insane man; three by colored men; two women by their husbands; and of the remainder, some by parties unknown—all of which could be scarcely attributable to Order No. 40. If the reports received since the issuing of Order No. 40, are correct, they exhibit no increase of homicides in my time, if you are correct that one hundred had occurred in the past twelve months.

That there has not been a perfect administration of justice in Texas, I am not prepared to deny.

That there has been no such wanton disregard of duty on the part of officials, as you allege, I am well satisfied. A very little while ago you regarded the present officials in Texas the only ones who could be safely trusted with power. Now you pronounce them worthless, and would cast them aside.

I have found little else in your letter but indications of temper, lashed into excitement by causes which I deem mostly imaginary, a great confidence in the accuracy of your own opinions, and an intolerance of the opinions of others; a desire to punish the thoughts and feelings of those who differ with you, and an impatience which magnifies the short comings of officials who are perhaps as earnest and conscientious in the discharge of their duties as yourself, and a most unsound conclusion that while any persons are to be found wanting in *affection or respect* for Government, or yielding it *obedience from motives which you do not approve*, war and not peace is the *status*, and all such persons are the proper subjects for military penal jurisdiction.

If I have written anything to disabuse your mind of so grave an error, I shall be gratified.

I am, Sir,

Very Respectfully,

Your Obedient Servant,

W. S. HANCOCK,

Major General Commanding.

Captain Assistant Secretary for Civil Affairs.

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